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The Christian Lawyer

Henry III Nuss

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COMMENTS

THE CHRISTIAN LAWYER†

Henry Nuss III*

I. INTRODUCTION

"Jesus was born in Bethlehem of Judea in the days of Herod the king. . . ." Matthew 2:1

Christianity made its entrance into a world which possessed two

† [Ed. note] Within the past few years, considerable attention has been devoted to the interrelationship between Christianity and the law. E.g., the *Oklahoma Law Review* and the *Vanderbilt Law Review* have run symposia on the subject. Both are cited in this Comment. Undoubtedly, this new found interest arises as a result of various factors. Although it would be impossible to catalogue these factors, the following must be included among the more important: (1) There has been a significant post-World War II religious reawakening. (2) The Nazi "legal" outrages have had a substantial effect upon legal philosophy. E.g., the recantation of former relativist Gustav Radbruch. See Stone, *Uncommitted Relativism in Modern Theories of Justice*, 16 Sw. L.J. 171 (1962). (3) Within the last generation, the American Bar Association has placed the emphasis of its activities on public service. (4) Recent developments in both law and theology have initiated interest in each area by the other discipline. E.g., Symposium, *Communism and Christianity*, 15 Perkins S. Theology J. 5 (1961). (5) The impact of a highly interconnected and tremendously complex society has caused both disciplines to institute critical and extensive self-reexamination.

In recognition of this interest, the *Journal* presents this Comment as the first of several to be presented in the area of religion, ethics, and the law. The present Comment presents a Southern Baptist view of the problem, and the *Journal* hopes in the future to publish similar works by members of other faiths, e.g., Methodist, Unitarian, Roman Catholic, Jewish.

A word of caution should be advanced to the reader who is accustomed to the usual *Law Journal* writing style. Although everything possible has been done to conform the Comment to *Journal* style, certain limitations exist in the very nature of the material. Ordinarily, legal writing may be fairly well limited to objective statements, but, in the field of ethics and religion, purely objective statements become hard to make and achieve little validity. This point has perhaps been best made by the great German theologian Rudolf Bultmann, who developed the existential-existential dichotomy, which has been preserved in translation by Prof. Schubert M. Ogden of Perkins School of Theology at Southern Methodist University. See Ogden, *Christ Without Myth* 47 (1961): "Bultmann argues that a sharp distinction must be made between the *existential* or philosophical understanding of existence in general and the *existential* understanding that the individual always has of his own unique situation." This concept is clear in Bultmann's own description of the Bible as "a word addressed personally to me, which not only informs me about existence in general, but gives me real existence." Bultmann, *Jesus Christ and Mythology* 53 (1958). Applying this concept to the subject-matter of this Comment, it is clear that, if the Comment states that a "non-Christian . . . may be ethical. The Christian . . . must be," there is no implied condemnation of other religious ethics; only a statement of the writer's *existential* has been made. See text accompanying note 72 *supra*. Moreover, it is the writer's distinctly individual understanding, since the *existential* decision out of which the interpretation emerges cannot be passed on, but must always be realized anew." Bultmann, *Is Exegesis Without Presuppositions Possible?* (1957), in *Existence and Faith* 289, 296 (Ogden transl. 1960). In conclusion, the introductory words of Bultmann in an early work seem appropriate; he stated that his "book cannot be in itself for the reader *his* encounter with history, but only information about *my* encounter with history." For this reason, the book would appear to the reader as a "*view*." "Whether [the reader] afterward remains a mere spectator is his affair." Bultmann, *Jesus and the Word* 6-7 (rev. ed. Smith & Lantero transl. 1958).

* A.B., Wheaton College; LL.B., Southern Methodist University; formerly Business Manager, *Southwestern Law Journal*; Attorney at Law, Corpus Christi, Texas.

highly developed legal systems, the Hebrew and the Roman. The Biblical and Talmudic law of the Hebrews was an elaborate system of regulations governing virtually all aspects of economic, political, ecclesiastical, and family life. It was founded upon the moral law of the Torah and was expounded and applied by Jewish rabbis. The Roman law, equally elaborate and embracing, was based both upon the Greek Stoic philosophy of the supremacy of reason and upon the Roman practical sense of order. It was expounded and applied generally by a professional class of jurists and lawyers. Jesus and His followers respected both of these systems of law and paid tribute to their importance. They seemed to challenge, however, the sufficiency of the moral and philosophical foundations upon which these systems were based.¹ Both moral law and civil law, they said, are to be interpreted in the light of God's will and purpose; they are relative to that will and purpose; they do not have ultimate sanctity in and of themselves; they are not eternal and unchangeable; and, where they conflict with God's will, they are not binding. Their negative response to the query, "Is a man morally bound to obey an immoral law?" led to the early persecution of the church, and Christian worship itself was made illegal under the early Roman law.

With the conversion of the Roman emperors to Christianity in the fourth century, however, the church, because of its new-found political respectability, was forced to view its relationship with the law from a different perspective. Thus the query arose: "Does Christianity require more of a legal system than that it remove all disabilities of Christian worship?" or, even more, "Does the emperor's Christianity have anything positive to contribute to his role as legislator?" The response of that time was definite, for the emperors of Byzantium considered it their Christian responsibility to reform the laws "in the direction of humanity"—to eliminate iniquity, to protect the poor and oppressed, and to infuse justice with mercy.² Reforms were made in the areas of marriage and family law, the law of slavery, and the status of women in society—a contrast to both the inherited legal traditions of pagan Rome and the Germanic tribal laws of roughly the same era.

In 1075, Pope Gregory VII reasserted the political and legal independence of the church, and at the same time proclaimed his own political and legal authority over all priests, bishops, and archbishops. This visible corporate church required a systematic body

¹ Berman, *The Influence of Christianity Upon the Development of Law*, 12 Okla. L. Rev. 86, 90 (1959).

² Cf. The Preamble of the Ecloga, ca. 740 A.D., reprinted in Berman, *supra* note 1, at 99.

of law, which was forthcoming in the *Jus Canonicum*, a codified body of ecclesiastical, criminal, family, and property law. Searching for a rationale for the secular system of laws, the monasteries and universities of medieval Europe developed the so-called "natural-law theory," the first Christian attempt to develop a system of legal science.

Breaking the grip of the Dark Ages, the sixteenth century Protestant Reformation terminated the medieval dualism of two official hierarchies, the legal systems of the church and of the states. In protestant countries the church generally came to be considered a-political and a-legal; the only sovereignty was the secular state. And, as a by-product of the Reformation, there evolved a Christian legal positivism³ to supplement the natural-law concept of law.

Various attempts have been made to eliminate the dualism of secular and ecclesiastical life altogether and to govern Christian communities by Biblical law. The Puritan example, although relatively short-lived, left its mark upon our theology and our jurisprudence. In contrast, however, the twentieth century protestant has established an image of the Christian individual living in a secular society. Embodied in this image there is, perhaps, a concept of Christian legal ethics, but apparently no fully developed Christian philosophy of law.

It is clear that the church has utilized many different approaches to the law throughout its history. This does not indicate an indifferent attitude, however, but rather illustrates the emphasis which is placed upon different facets of the church's relationship with the law as circumstances vary in different ages and societies. In all situations, however, Christianity seems to have accepted the law as an integral part of God's creation, and it has usually attempted to adapt it to what it considered to be God's purpose for man. The Christian church has thus promulgated principles which have not only effected a way of life for its adherents, but which have also formed a foundation for many of our concepts of jurisprudence. Indeed, a theological basis seems to provide what is probably the only genuine foundation for absolute ideals of justice.⁴ It is in the light of these common principles that this Comment seeks to examine the present day needs of both Christianity and the law, and the duties of the Christian attorney toward each.

³ One must remember, however, that Luther's concept—that the development of positive law is the task of the secular authorities and not of the church as such—could only be proclaimed after more than four centuries during which the church and the state together had succeeded in Christianizing law to a remarkable extent.

⁴ Friedman, *Legal Theory* 450 (3d ed. 1953).

II. THE NEED OF CHRISTIANITY FOR THE LAW

"Where the word of a king is, there is power." Ecclesiastes 8:4

The Christian theologian has traditionally cited three "uses" of the law.⁵ The first may be classified as political: law helps to preserve mankind from mutual destruction and to provide an organized civilization in which the gospel may be proclaimed. The second use is said to be pedagogic: law must lead man to recognize and acknowledge his sinful condition, thus driving him toward the grace of Christ. The third use is decidedly ethical: law provides a guide for the new life of a redeemed child of God.

A. *The First Use: Order In Society*

"Let all things be done decently and in order." 1 Corinthians 14:40

The Bible indicates that the human race is infected by a disease called sin,⁶ a condition which results in a propensity to act in one's own interest rather than in behalf of society as a whole or in the interest of God.⁷ This phase of man's nature is said to generate a disorder in society⁸ which conscience alone is unable to control.⁹ Thus the Christian theologian points to law administered through a political state as ordained to meet this need.

The Christian belief in man's tendency to sin, with the resulting need for law, is mirrored in the view of man expressed by secular schools of depth psychology. In the words of Gregory Zilboorg:

We so-called normal people, know without knowing it, feel without being aware of it, the degree to which we are inwardly tempted in all directions of aggression and depravity. As Freud put it so tartly, the law does not forbid that which man is not prone to do. Therefore, "Thou shalt not kill" or "Thou shalt not covet thy neighbor's wife" are not merely prohibitions against the deeds of some few evil . . . men. On the contrary, these are commandments issued for the guidance of the average man with average propensities.¹⁰

The neo-orthodox theologian similarly echoes this principle, for Karl Barth calls on Christians to thank God that He has not given us up to disorder, but has given us an order which "has proved itself to be effective; . . . it is an order which sets up a barrier . . . against the chaos into which sin would inevitably plunge us if God had not instituted the State and . . . entrusted it with the sword."¹¹

⁵ Barth, *Christ and Law*, 12 Okla. L. Rev. 67, 69 (1959).

⁶ Jeremiah 17:9; Romans 5:12; see text accompanying note 22 *infra*.

⁷ Isaiah 53:6.

⁸ Romans 1:21-32.

⁹ Romans 2:14-15.

¹⁰ Zilboorg, *The Psychology of the Criminal Act and Punishment* 78-79 (1954), cited in Katz, *Law, Christianity and the University*, 10 Vand. L. Rev. 879, 880 (1957).

¹¹ Barth, *A Letter to Great Britain from Switzerland* 13 (1941), cited in Katz, *Christ*

Thus, the Christian contends, without restraint and fear of punishment for lawless deeds, men would run roughshod over the rights and property of others. Because He is unseen, God is not feared by unregenerate men; and because He is often tolerant of their activities, He is viewed as having granted license to practice further sin.¹² Human rulers, on the other hand, are not nearly so gracious in their dealing with mankind, and the regulations they impose are easily understood. Thus, for the Christian, the law responds to a concrete need for order, peace, and balance in society.

B. The Second Use: Recognition And Control Of Sin

"For by the law is the knowledge of sin." Romans 3:20; "And as many as have sinned in the law shall be judged by the law." Romans 2:12

Saint Paul, in his epistle to the Romans, admitted

I should never have had sin brought home to me but for the law. For example, I should never have felt guilty of the sin of coveting if I had not heard the law saying "Thou shalt not covet" . . . What happened was this. Sin, at the touch of the law, was forced to expose itself as sin. . . . The contact of the law showed the sinful nature of sin.¹³

Thus we see that the existence of the Mosaic law revealed to the Christian of Saint Paul's day the reality of his sin, and with its penalties, convinced him that the responsibility for its manifestations was not to be avoided. The Christian of the present day would apparently extend this function to positive secular law as well.

In addition to revealing man's sinful nature and his responsibility for sinful acts, the Christian positivist would have the law continue on as a means used by God to deal with sin. The law, states the positivist, enlists man's capacity to calculate pleasure and pain and to respond to threats and offers. It considers him to be conditionable in the same way that animals are conditionable,¹⁴ and thus provides a formidable weapon with which God may combat the "forces of Satan." Thus, criminal penalties are imposed, in part, to create examples which may deter further sinful acts by others.

Moreover, the natural-law adherent classifies positive law as a part of God's plan of judgment. As a righteous and just being, God uses the penalties provided by positive law to punish sinners and to

and Law, 12 Okla. L. Rev. 57, 60 (1959). Paul Tillich says in agreement, "Love, in order to exercise its proper works, . . . must provide for a place on which this can be done. . . ." Tillich, *Love, Power and Justice* 49 (1954).

¹² Oubre, *Political State in the Divine Economy* 77, May 1961 (unpublished thesis in Dallas Theological Seminary Library).

¹³ *Romans* 7:7, 13 (Phillips translation).

¹⁴ Katz, *supra* note 11.

chastise misbehaving believers. Unregenerate men are permitted to be punished, in part, to make them realize the control which Satan has on their lives, to provide a preview of their future in eternity, and to protect society from the danger which they present. Believers are chastened as children to bring them toward their full maturity in Christ. Thus, law, while in no respect a cure, is a means which the Christian believes God uses in pointing out and controlling sin.

C. The Third Use: A Guide For Conduct

"All scripture is given by inspiration of God, and is profitable for doctrine, for reproof, for correction, for instruction in righteousness: That the man of God may be perfect, thoroughly furnished unto all good works." 2 Timothy 3:16-17

The Christian faith has traditionally considered the Bible to be the ultimate guidebook for Christian conduct.¹⁵ The response of the Protestant Reformation to questions of both faith and morals was "What sayeth the Scriptures." The Bible enumerates specific instructions for specific acts and attitudes,¹⁶ and promulgates general principles and statements of policy to cover those acts not mentioned by name.¹⁷ Moreover, matters which are not covered by these declarations and principles are frequently clarified for the believer either by prayer or by the guidance of the Holy Spirit within one's heart. Since Christians have a power within them which enables them to move beyond the temptation to act as though they are a law unto themselves, they have not generally required the external prodding which is necessary to order the behavior of unbelievers. Because he is transformed by love, the believer can so live in loyalty to God's will and purpose as to be able to follow Augustine's maxim, "Love and do what you will" (*dilige et quod fac vix*).¹⁸

Nevertheless, situations whose solutions are not directly ascertainable from either the Bible or Augustine's maxim do arise. These matters are largely related to activities of a nonmoral character which generally cover procedural factors necessary for the orderly administration of society. Thus, were it not for the law of the state, the Christian could not discover where he is permitted to drive his automobile, how to organize a corporation, or when and where to pay his taxes. In situations of this nature, therefore, the law provides guidance for the daily life of the believer just as it does for the nonbeliever.

¹⁵ Psalms 119:9, 105; cf. Proverbs 6:23.

¹⁶ E.g., Galatians 5:16-21; 1 Thessalonians 5:14-22.

¹⁷ E.g., Romans 13:10.

¹⁸ Lehmann, *Law as a Function of Forgiveness*, 12 Okla. L. Rev. 102, 109 (1959).

D. Conclusion

Despite these traditional ways in which Christians view the law, the trend seems to be toward a view that the church must be careful not to become too attached to any particular system of law. Christianity is capable of operating in monarchies and democracies, under capitalism or feudalism. These systems change and the values, ideas, and material conditions that create them also change. To become too strongly attached to any one system, then, would be a dangerous thing, for Christianity could possibly become identified with what is only a temporary phenomenon.¹⁹ The Christian church must realize that, while a legal system may bestow certain benefits for a time, the government is actually helpless in any attempt to achieve ultimate Christian goals. Church and state should not become commingled with one another, for governments and laws are a part of the whole which the Bible calls the world (*kosmos*),²⁰ thus precluding the possibility of a truly Christian state.²¹ God has apparently seen fit to reserve the destiny of His program on earth, not for impersonal governments and legal systems, but for men.

III. THE NEED OF THE LAW FOR CHRISTIANITY

"For God has done what the law, weakened by the flesh, could not do." Romans 8:3 (RSV)

As discussed previously, the Christian theologian has viewed the human race as being under the bonds of sin since the time of Adam. He points to a sinful *nature*,²² which is present in every man, even before that nature expresses itself in *deeds*.²³ He points to the law, which has been unable to effect a cure for the problem of sin,²⁴ and declares that this is to be expected, because the legal system itself is under the control of sinful men. His conclusion is that the only possible cure for the sin which plagues the human race is the saving

¹⁹ Peterson, *The Christian Attitude Toward the State*, His, Dec. 1956, p. 13, 16.

²⁰ 1 John 2:15-17.

²¹ Ellul, *Propositions Concerning the Christian Attitude Toward Law*, 12 Okla. L. Rev. 134, 135-36 (1959); Stringfellow, *The Christian Lawyer as a Churchman*, 10 Vand. L. Rev. 939, 964 (1957); Black, *In Whatsoever State*, His, Dec. 1959, p. 1.

²² *Jeremiah* 17:9; *Ephesians* 4:22.

²³ *James* 4:17. The Larger Catechism defines sin as "any want of conformity unto or transgression of, any law of God given as a rule to the reasonable creature." Question 24. See also Mollegen, *Christ and Law*, 12 Okla. L. Rev. 48, 49-50 (1959).

²⁴ The law may regulate sinful acts to a degree by means of its coercive power, but unfortunately it is unable to reach the source of these acts, *viz.*, the sinful nature of man, and there effectuate any permanent cure. The law is only able to legislate, "Thou shalt behave as if thou lovest God and thy neighbor;" it can go no further. It may squeeze the individual into a mold, but it can never "remold his mind from within" so that he may prove in practice that the will of God is good and acceptable and perfect. *Romans* 12:2 (Phillips translation).

grace of Jesus Christ.²⁵ The law may properly serve as a schoolmaster to bring one to Christ,²⁶ but there the gospel must take over and make each sinner into a new creature.²⁷

This view does not propose abandonment of the secular system of law. Rather, it allows Christianity to fulfill that need of the law which is a corresponding need of every depraved individual. It allows Christianity to provide a purpose and a goal for law. The positivist considers law as being (1) a consciously formulated norm of behavior, (2) enforced by the power of the state, and (3) directed toward achieving certain goals;²⁸ the Christian resolves that Christianity ought to supply the goals toward which the law is aimed.

This resolution has become complicated by the fact that many have viewed the separation of law from justice, from moral and religious standards, as a triumph of modern jurisprudence. Hans Kelsen, perhaps the most influential legal theorist of our day, argues that "the concept of the law has no moral connotations whatsoever."²⁹

To the positivist, the origin of the law is simply the impersonal command of a sovereign.³⁰ The natural-law theorist, however, believes that law lies in the very ordering agency of reality.³¹ To the positivist, the nature of law may be described basically as force.³² To the natural-

²⁵ *John* 14:6; *Acts* 4:12, 10:43.

²⁶ *Galatians* 3:24.

²⁷ *2 Corinthians* 5:17.

²⁸ Stumpf, *Theology and Jurisprudence*, 10 *Vand. L. Rev.* 885, 887 (1957).

²⁹ Kelsen, *General Theory of Law and State* 5 (1949).

³⁰ Kelsen, *The Pure Theory of Law*, 50 *L.Q. Rev.* 474 (1934).

³¹ Cf. *John* 1:3. Augustine is the pivotal theologian for the natural-law theorists, although his views have been supported throughout the ages. Even John Calvin, who most emphatically made the depravity of man the core of his systematic theology, was able to write:

We perceive in the minds of all men general impressions of civil probity and order. Hence it is that not a person can be found who does not understand that all association of men ought to be governed by laws, or who does not conceive in his mind the principles of those laws.

Calvin, *The Institutes of the Christian Religion*, Bk. II, c. 2, § 13. Neo-orthodox Reinhold Niebuhr concurs: "There are essential universal principles of justice." 2 *Niebuhr, The Nature and Destiny of Man* 254 (1943).

One should note Parsons, *Political Theories of the New Testament*, 4 *Catholic Biblical Q.* 218, 225 (1942), however, where the author argues that all men are by nature equal, and it was therefore not intended for man to dominate over his fellow man, but only over irrational creation.

³² The essence of law, states Kelsen, is "coercive force," resting upon the community's monopoly of force. Kelsen, *supra* note 29, at 21. One danger under the positivistic system, then, is that law may become nothing more than force, thus allowing barbaric systems of jurisprudence to claim the title "law." The Nazi system of positive law has been described as "lawlessness in statutory form." Cf. Radbruch, *Gesetzliches Unrecht und Ubergesetzliches Recht*, 1 *Süddeutsche Juristen-Zeitung* 105 (Germany 1946), cited by Hart, *Positivism and the Separation of Law and Morals*, 71 *Harv. L. Rev.* 593, 617 (1958), and criticized therein by the author for its naïveté. Similarly, Lenin has stated that the Soviet system is a "power unrestrained by any law and based upon force and not law." Gsovski, *The Soviet Concept of Law*, 7 *Fordham L. Rev.* 1, 31 (1938). Summed up by Krylenko: "a

law theorist, the element of justice is added.³³ In the positivist camp, the creation of rights is generally declared to be the purpose of law—if, indeed, law is to have a purpose. The natural-law adherent, however, declares its purpose to be, not the creation, but the preservation of human rights.

Thus when one admits that the law has a goal or purpose to achieve, whether that purpose be the creation or the preservation of rights, it becomes difficult to say that "the concept of the law has no moral connotations." To the positivist Bentham, the purpose of law was to order the conduct and relations of mankind in such a way as to minimize pain and maximize pleasure and thus achieve the greatest happiness for the greatest number.³⁴ To the Soviet positivist, the purpose of law is the "fundamental remaking of the conscience of the people."³⁵ An example of the "preservation-of-rights" purpose, on the other hand, may be detected in the American Declaration of Independence, which declares that all men "are endowed by their creator with certain inalienable rights. . . ."

Since law is to have a purpose, the Christian calls upon the principles of Christianity to supply that purpose. One principle provided by Christianity is the belief in individual importance.³⁶ Because Christ died for each man, the Christian must realize the unique value of every individual. When this principle is applied to the law, we achieve a government which exists for the benefit of the people, not one in which people exist for the government. When applied to the field of criminal law, we achieve a system which provides for an adequate defense of each accused and which deprives him of life or property only when convicted "beyond a reasonable doubt."

The concept of individual responsibility may serve as a second principle.³⁷ Because God created man with a free will, man may be

club is a primitive weapon, a rifle is a more efficient one, the most efficient is the court." Berman, *Justice in Russia* 28 (1950).

³³ *Romans* 13:5 indicates that the power of the state is to be obeyed not solely because it is power, "but also for conscience sake." Augustine declares that the rule of law requires not bare force, but justice. Augustine, *The City of God*, Bk. XIX, c. 21. Plato similarly stated that "no law or ordinance whatever has the right to sovereignty over true knowledge." Plato's *Laws*, 722D-723B (Jowett ed. 1892), cited in Stumpf, *supra* note 28, at 888. The argument seems to be that law, to achieve respect, cannot simply command respect, but must earn it by achieving justice in every situation; it must represent human achievement in order to deserve human loyalty. Fuller, *Positivism and Fidelity to Law—A Reply to Professor Hart*, 71 *Harv. L. Rev.* 630, 632 (1958).

³⁴ Bentham, *Principles of Morals and Legislation*, c. 1 (2d ed. 1830). "Till law existed, property could scarcely be said to exist. Property and law were born together and die together." Bentham, *The Limits of Jurisprudence Defined* 85 (Everett ed. 1945).

³⁵ Gsovski, *supra* note 32, at 16.

³⁶ Ellul, *supra* note 21, at 145.

³⁷ *Ibid.*

held responsible by God for his exercise of choice. On this basis, the state may also hold each individual responsible for his actions.

Perhaps the concept of individual freedom is the most familiar example of a Christian principle applied by a government through law. The inscription on our Liberty Bell, "Proclaim liberty throughout the land," is taken from *Leviticus* 25:10.³⁸ Were it not for the religious convictions of the earlier settlers of America, this principle might not have become embodied in our form of government.

Indeed, from basic religious liberty there evolved the other liberties which we today cherish as essential to the democratic way of life. Religious liberty involves all of the essentials of human liberty: freedom of expression; freedom of action, *i.e.*, to associate, to assemble, and to urge one's convictions upon others; and freedom of thought.³⁹ The corollaries of this essential freedom are, states Harding, the right to join in the making of national decisions, to dissent and to express one's beliefs even though they are deemed erroneous, and an abiding concern for the common good.⁴⁰

The effect of Christianity upon the law, however, is not to be limited to supplying a broad general purpose for a legal system. Christianity works primarily in the hearts of individuals, supplying an inner motivation to obey the law and to avoid sin. Moreover, Christianity may work in the hearts of individuals in public office. For example, a Christian legislator may receive divine guidance relating to a piece of prospective legislation, either through his background in the Christian faith or through the Holy Spirit in his life. The same is true of a Christian judge,⁴¹ governor,⁴² or attorney.⁴³ For these reasons, we must examine the effect of Christianity upon the life and practice of the individual attorney.

³⁸ The writer of the fourth gospel, quoting Christ, states "And ye shall know the truth, and the truth shall make you free." *John* 8:32. Saint Paul echoes this truth: "[W]here the Spirit of the Lord is, there is liberty." *2 Corinthians* 3:17. It should be remembered, however, that Christ's reference was predominantly to freedom from religious regulation, rather than from political pressure.

³⁹ Harding, *Religious Liberty: The Source of Freedom?*, 11 Sw. L.J. 169, 176 (1957).

⁴⁰ *Ibid.*

⁴¹ *E.g.*, Sherman, *Federal Judge Estes Relates Christian Ethic to Justice*, Dallas Times Herald, Apr. 14, 1961, § C, p. 2.

⁴² Hatfield, *The Truly Satisfying Life* (1960).

⁴³ One should not underestimate the role of the individual attorney in framing the American economic life, for lawyers generally are the architects of the economic growth and development of a nation. Here the counselor is least controlled by the rules of law, for he uses them as an artist uses pigments—to accomplish a desired design. Jones, *Christian Ethics and Law in Action*, a paper presented at a national conference on Christianity and Law, held at the University of Chicago School of Law, Sept. 7-10, 1958, under the direction of the National Council of Churches.

IV. THE DUTIES OF A CHRISTIAN ATTORNEY

A. *The Lawyer's Duty To Himself*

"But let a man examine himself." 1 Corinthians 11:28

It has been said that the practice of law is not a characteristically Christian pursuit,⁴⁴ that the insights and teachings of the Christian faith limit the Christian as a lawyer and a legislator,⁴⁵ and that a lawyer's faith in a religious standard of conduct may serve to create ethical problems for him as well as to solve them.⁴⁶ Therefore, in order for the Christian attorney to become an effective and useful servant of the Holy Spirit, he must consciously attempt to ascertain whether or not there are evils inherent in our system of justice that would require him to absent himself from the practice of law.

The principal problem which confronts the Christian attorney is the situation in which he senses a conflict between the requirements of his role in a man-made system of law and the requirements of divine justice. The function of the lawyer under the man-made system is to present his client's case in the most persuasive manner possible, so that the full value of his position may be appreciated by the deciding tribunal.⁴⁷ Consequently, the attorney's role places him one step away from the determination of justice.

It is possible, of course, for the lawyer to practice law and never permit his beliefs and principles to come to the fore; he can be a technician and remain strictly within the requirements of the law. There are many lawyers who would insist that this is the only proper function of the attorney and that he has no business interjecting his personal beliefs into the case,⁴⁸ for this may tend to reduce his objectivity and ability to analyze. However, the Canons of Professional Ethics require that the lawyer "must obey his own conscience and not that of his client."⁴⁹ To this the Christian adds that man is ultimately answerable to God for his conduct.

It is axiomatic that our secular system of law is imperfect in its attempt to achieve justice in every situation. Individuals differ from one another greatly, and their acts do not always conform to a predictable pattern which may be regulated uniformly by the law.⁵⁰ In addition, a system of law must necessarily be maintained by

⁴⁴ Curtis, *The Ethics of Advocacy*, 4 Stan. L. Rev. 3 (1951).

⁴⁵ Ellis, *The Christian Lawyer as a Public Servant*, 10 Vand. L. Rev. 912, 927 (1957).

⁴⁶ MacKinnon, *Summary of a Statement of the Effect of Religious Principles on Lawyer's Ethical Problems*, 10 Vand. L. Rev. 931, 932 (1957).

⁴⁷ Thode, *The Ethical Standard for the Advocate*, 39 Texas L. Rev. 575 (1961).

⁴⁸ Ellis, *supra* note 45, at 914.

⁴⁹ Canon 15, American Bar Association Canons of Professional Ethics.

⁵⁰ MacKinnon, *supra* note 46, at 933.

fallible human beings. Because they are elected officials, judges, state attorneys, and legislators, each may be subjected to political pressures.⁵¹ Even though such a system is designed to approach justice—and does so in the majority of cases—the lawyer must realize that it is not able to yield true justice in every instance.

The basic purpose of criminal law is to punish the guilty and to protect the innocent. But what does the lawyer do, in the light of this purpose, when the “technicalities” of the law provide an escape for a “morally guilty” client?⁵² The attorney has two choices: (1) he may take advantage of the technicality and obtain his client’s freedom, or (2) he may ignore the “technicality” and allow the criminal to be convicted and punished. Difficulties result from either course of action. The former choice permits a criminal to return to society unpunished. However, this would preserve the existing legal system by preventing it from being replaced by the conscience of an individual attorney. Furthermore, an individual lawyer’s conscience is too subjective to serve as a guide for determination of guilt or innocence. Certainly the consciences of all attorneys, even of all Christian attorneys, are not uniform in their application. Although the result of this first choice may be unjust, it is uniformly so and may be changed by the appropriate sovereign if it is not in the interest of society consistently to maintain such a result. Public incitement at freeing a “morally guilty” man should alone be sufficient to prompt legislators to enact proper legislation.

However, the attorney may follow the second course of action and, ignoring the technicality, permit the wrongdoer to become convicted and be sent to jail. The lawyer here may believe that, if the wrongdoer were acquitted, the public reaction would not be sufficient to encourage the enactment of corrective legislation, due to public apathy or legislative incompetence. He may believe that, in fact, the public reaction would be one of aversion, and that this might

⁵¹ *Ibid.*

⁵² An example of a “technicality” exists in the Texas interpretation of the rule that an indictment must clearly state the offense which is charged. In *Northern v. State*, 150 Tex. Crim. 511, 203 S.W.2d 206 (1947), the case was remanded because an indictment which charged that Northern “did . . . kill Fannie McHenry by . . . kicking and stomping the said Fannie McHenry,” failed to state what instrument (a boot) was used for kicking and stomping. One could similarly point to the “technicalities” by which Caryl Chessman avoided death for eleven years after the pronouncement of his sentence, and which kept the murder conviction of Thomas J. Mooney continually before the courts from his conviction in 1917 until his pardon in 1938. See *Ex parte Mooney*, 10 Cal. 2d 1, 73 P.2d 554 (1937); 294 U.S. 103 (1935); 296 U.S. 541 (1935); 305 U.S. 573 (1938). However, it is difficult to conceive of an attorney who would refuse to plead a rule of law on behalf of his client, even though that rule is characterized as a “technicality” by the layman. It must be remembered that such “technicalities” can convict as well as free one’s client.

eventually lead to a complete disregard for the legal system which is responsible for such injustices. Consequently, he may argue, ought not the inequities of the statutes be tempered by the individual attorney's sense of justice so that the system may thus be preserved? Moreover, in allowing the accused to become convicted of the crime of which he is morally guilty, the attorney may be doing what he feels to be morally right, in spite of what the *kosmos* states to be right. No amount of money, he may feel, would justify his participation in an act which results in obvious injustice.

If the lawyer takes such a course of action, however, he is ignoring his oath of office to uphold the law as well as his duty to represent the client to the best of his ability.⁵³ In addition, he is "bearing false witness" to his client, whom he pretends to be representing adequately, unless he tells the client, "I can prevent your imprisonment, but I refuse." Moreover, he is defrauding his client if he accepts a fee for his work. The attorney, by personally determining the guilt of his client, is acting as the judge and jury, and in so doing he goes beyond his authorized jurisdiction. "Who are thou that judgest another man's servant?"⁵⁴ is a question he must consider. "Judge not, that ye be not judged"⁵⁵ and "Vengeance is mine; I will repay, saith the Lord"⁵⁶ might properly be spoken to the Christian lawyer. It is the magistrate who has been "ordained of God" for this purpose, not the lawyer. "He is the servant of God to execute His wrath on the wrongdoer";⁵⁷ the individual attorney is not.

It is possible that circumstances may exist which will require the Christian to refrain from associating with a man-made system of law. For example, he could not participate in acts of genocide even though they be commanded by the state. Of course, situations of this nature are unlikely in the American system of justice. However, the dictates of the sovereign of, for example, Nazi Germany or Communist China could well be out of keeping with the attorney's behavior as a child of God.

The Anglo-American adversary system is successful, to a large extent, because it is based upon the imperfect nature of man—a Christian concept. That is, an imperfect man may do anything to remain out of prison or to win a civil action. Therefore, there must

⁵³ "I, _____, do solemnly swear that I will support the constitution of the United States, and of this State; that I will honestly demean myself in the practice of law, and will discharge my duties to my clients to the best of my ability. So help me God."

⁵⁴ *Romans* 14:4.

⁵⁵ *Matthew* 7:1. See also *Luke* 6:37, 1 *Corinthians* 4:5.

⁵⁶ *Romans* 12:19.

⁵⁷ *Romans* 13:1.

be two men in our system, one on each side, who tend to keep one another in check. Canon 15, which states that it is improper for a lawyer to assert in argument his personal belief in a client's innocence or in the justice of his cause, is also in keeping with this detached role which society relegates to the lawyer.

It is perhaps true that

there must be many things in the profession from which a very sensitive conscience would recoil, and things must be said and done which can hardly be justified except on the ground that the existence of this profession and the prescribed methods of its action are in the long run indispensable to the honest administration of justice.⁵⁸

But is not the honest administration of justice justification enough? Certainly the administration of the law would not be aided in its attempts to obtain final justice if the Christian refused to practice law or to defend a criminal. It is true that the end does not justify the means, but without any means, no hope could possibly exist to achieve the end of justice. The client, then, is entitled to say to his counsel: "I want your advocacy, not your judgment; I prefer that of the court."⁵⁹

There are those who feel that the conflicts with divine justice which the lawyer senses in our legal system may be answered by a religious code of conduct dictated by his church. For example, the Catholic church has indicated a pattern of conduct for its members to follow in such areas as divorce, abortion, bankruptcy, and statute of limitations situations.⁶⁰ For the protestant, however, the doctrine of the priesthood of the believer precludes any extra-scriptural command by a man or group of men,⁶¹ whether clergy or not. Of course, the same principles are available to the protestant for his guidance. Most lawyers, including Catholics, probably believe that their religious faith seldom, if ever, provides detailed rules for professional

⁵⁸ Lecky, *The Map of Life, Conduct and Character* 119 (1889).

⁵⁹ *Johnson v. Emerson*, L.R. 6 Ex. 329, 367 (1871).

⁶⁰ Illustrations of this type of guidance may be found especially in two series of lectures given to the Catholic Lawyer's Guild of Chicago by officers of the Roman Catholic church. One series, entitled *Canon Law on Civil Action in Marriage Problems*, presents a definite pattern of conduct to follow in divorce and separation cases. Many of the attorney's worries concerning his own moral responsibility in this troublesome area, therefore, are solved for him by rules laid down by his church. Similarly, in a series on *The Natural Law and the Legal Profession*, lawyers in the Guild were given assistance for guidance in professional work on such matters as sterilization, housing contracts and leases which forbid children, birth control, alienation of affections, abortion, euthanasia, religious education, bankruptcy, anti-trust suits, the plea of the statute of limitations, wage contracts and strikes, and the responsibility of the buyer to tell the seller of hidden values in the object of purchase. MacKinnon, *supra* note 46, at 931. For a discussion of the above topics by a Catholic layman, see St. John-Stevas, *Life, Death and the Law* (1961).

⁶¹ *Revelation* 22:18-19. See also 1 *Timothy* 2:5.

conduct in specific situations.⁶² However, questions relating to individual conduct within the profession must be answered, and they must be answered by the believer himself alone with God.

B. *The Lawyer's Duty To His Church*

"Whatsoever ye do, do all to the glory of God." 1 Corinthians 10:31

The reader need only examine the book of Acts in order to discover a vast difference between the church of twentieth century America and that of the first century.⁶³ In its early, effective days, the church seems not to have been guided so much by a professional clergy as by laymen who were submissive to the guidance of the Holy Spirit. The church of today has the same needs as the early church plus additional ones resulting from its expansion, its acceptance by society, and its infiltration by so-called "modern" elements. Thus far this Comment has generally discussed qualities which the lawyer derives from his relationship with Jesus Christ which he may properly incorporate into his life as a citizen and attorney. However, there are also several attributes which he possesses as an attorney that may be of value in his own spiritual life and in the life of his church.

The Christian attorney stands in a unique position to witness effectively to the salvation which is offered by the Christian faith. As an advisor to the community, as a leader in all walks of life, his opinion is respected. The traditionally intimate attorney-client relationship is an excellent vehicle for Christian counseling which may solve a client's greatest problem, *i.e.*, his relationship to God.

⁶² MacKinnon, *supra* note 46, at 932. See also St. John-Stevas, *supra* note 60.

⁶³ See J. B. Phillips' introduction to a paraphrase of the book of Acts:

It is impossible to spend several months in close study of the remarkable short book, conventionally known as the Acts of the Apostles, without being profoundly stirred and, to be honest, disturbed. The reader is stirred because he is seeing Christianity, the real thing, in action for the first time in human history. The newborn Church, as vulnerable as any human child, having neither money, influence nor power in the ordinary sense, is setting forth joyfully and courageously to win the pagan world for God through Christ. The young Church, like all young creatures, is appealing in its simplicity and singleheartedness. Here we are seeing the Church in its first youth, valiant and unspoiled—a body of ordinary men and women joined in an unconquerable fellowship never before seen on this earth.

Yet we cannot help feeling disturbed as well as moved, for this is surely the Church as it was meant to be. It is vigorous and flexible, for these are the days before it ever became fat and short of breath through prosperity, or musclebound by over-organization. These men did not make "acts of faith," they believed; they did not "say their prayers," they really prayed. They did not hold conference on psychosomatic medicine, they simply healed the sick. But if they were uncomplicated and naive by modern standards, we have ruefully to admit that they were open on the Godward side in a way that is almost unknown today.

No one can read this book without being convinced that there is Someone here at work besides mere human beings. Perhaps because of their very sim-

It has been argued that an attempt to handle a client in terms of the whole man rather than solely in terms of his legal problem should be avoided because the ability to give sound legal advice requires an aloof detachment from the client.⁶⁴ It would seem, however, that the ability to view the client's problem in its overall perspective—legal and moral—would enable an attorney not only to render better legal advice but also, perhaps, to assist in solving some of the deeper problems which the client may have.⁶⁵ The task of the Christian who works in the world as a lawyer, says Stringfellow, is the proclamation of the gospel in his daily work.⁶⁶

It is obvious that the special skills of the attorney may serve the church in various ways. For example, an attorney trained to speak eloquently and to analyze clearly may well convey God's message more forcefully than other, less trained, churchmen. Furthermore, his ability to analyze may assist him in solving numerous church problems, religious and non-religious,⁶⁷ and his contact with the outside world may enable him to place church and social problems in their proper perspective,⁶⁸ to explain them to the church leaders, and to assist in their solution in the light of practicability.

It goes without saying that the Christian attorney may perform the duties which are common to all laymen. According to the teachings of the Christian faith, he is to bring an "offering which is acceptable unto the Lord." The attorney principally offers himself. As any other layman, he must exercise stewardship wisely over the possessions which have been entrusted to him; he must give proportionately to the support of God's work. Thus the lawyer, because of

plicity, perhaps because of their readiness to believe, to obey, to give, to suffer, and if need be to die, the Spirit of God found what surely He must always be seeking—a fellowship of men and women so united in love and faith that He can work in them and through them with the minimum of let or hindrance. Consequently it is a matter of sober historical fact that never before has any small body of ordinary people so moved the world that their enemies could say, with tears of rage in their eyes, that these men "have turned the world upside down"! (Acts 17:6)

Phillips, *The Young Church in Action* vii (1955).

⁶⁴ MacKinnon, *supra* note 46, at 937.

⁶⁵ Cf. Galvin, *Some Comments on the Law of Domestic Relations in Texas*, 11 Sw. L.J. 291 (1957).

⁶⁶ Stringfellow, *supra* note 21, at 965.

⁶⁷ There are dangers to be avoided, however, in the application of legal reasoning to the Christian faith. The Talmud of the Pharisees is an excellent example of the absurdities which result from a legalistic attempt to apply the law of love to every situation for every individual. Legalism troubled the early church as well, culminating in the conference of Acts 15 to decide whether or not Gentile believers should be required to keep the law of Moses, including the rite of circumcision. The problem seems to continue to the present day for groups which feel constrained to require the abstinence of their members from such activities as dancing, card playing, and attending the theatre. The legal mind may be a valuable tool if used wisely, and yet an instrument of considerable harm if misused.

⁶⁸ Acts 6:1-4.

his unique experience and position in society is one of the key laymen in the church today.

C. *The Lawyer's Duty To The Legal Profession*

"I therefore, the prisoner of the Lord, beseech you that ye walk worthy of the vocation wherewith ye are called." Ephesians 4:1

The legal profession, like the local church, is not without its need of improvement.⁶⁹ Despite the fact that attainment of perfect justice is impossible within a man-made system, the Christian is under an obligation to develop and support concepts which will bring about a more nearly just system of law. Improvement of the orderly administration of justice within the United States is more easily obtained than improvement of society as a whole. The American Bar Association, for example, is in an era of public service, with particular emphasis placed upon such projects as legal aid and public defender, selection of judges, legislative recommendations, and the promotion of world peace through law.⁷⁰ While these projects undertaken by the Bar as a whole cannot replace the obligations owed to society by each individual lawyer, these efforts are entitled to the support of the Christian attorney.

The relationship between Christianity and the ethics of society, especially in the business area, has recently been the subject of considerable study.⁷¹ However, there are divergent views concerning the effect of Christianity upon the ethics of the legal profession.⁷² It is true

⁶⁹ In E. M. Morgan's review of Professor Goldstein's book, *Trial Technique*, he states that "this purports to be a lawyer's guide book for the trial of a lawsuit as it is actually conducted. As such, it is entitled to first rank." Then he continues:

If only some lawyer could rise up and honestly denounce Mr. Goldstein as a defamer of his profession! If only Mr. Goldstein himself had written his book as an exposition of the evils inherent in our adversary system of litigation! If only a reviewer could assert that this book is a guide not to the palaces of justice but to the red-light districts of the law! But a decent respect for the truth compels the admission that Mr. Goldstein has told his story truthfully. He has told it calmly, without pretense of shame, and (God save us!) without the slightest suspicion of its shamefulness. He has shown by his own unperturbed frankness with what complaisance the profession, which would smile the superior smile of derision at the suggestion of a return of trial by battle of bodies, accepts trial by battle of wits. In all innocence, he has produced a document which is a devastating commentary upon an important aspect of our administration of justice.

49 Harv. L. Rev. 1387, 1389 (1936). See also Martin, *Why Does Justice Fail?*, Saturday Evening Post, Aug. 27, 1960, p. 30.

⁷⁰ American Bar Association, Summary of Activities (1961).

⁷¹ Baumhart, *How Ethical Are Businessmen?*, Harv. Bus. Rev., July-Aug. 1961, p. 6; Taylor, *Morality in Business*, *His*, Jan. 1956, p. 26.

⁷² Berman, *supra* note 1, at 95, says there is a doctrine of Christian legal ethics; Mulder & Olsson, *Christian and Lawyer*, 12 Okla. L. Rev. 113, 130 (1959), state that the Christian is not necessarily more ethical than the non-Christian lawyer. See suggested reforms for the Texas Canons of Ethics in Sutton, *Guidelines to Professional Responsibility*, 39 Texas L. Rev. 391 (1961).

that the desire for a commendable reputation, which should be important to every attorney, may provide sufficient motivation for the non-Christian to behave as ethically as the Christian attorney. The difference, however, is this: the Christian finds his motivation in a love of fellow man and a respect for God to Whom he is responsible. The non-Christian, since he need only live up to a humanistic standard to be professionally ethical, *may* be ethical. The Christian, due to a difference in motivation, *must* be.

D. *The Lawyer's Duty To Government And Society*

"Put them in mind to be subject to principalities and powers, to obey magistrates, to be ready to every good work." Titus 3:1

Subjection to the rule of government has been a part of the life of the Christian church from its very beginning.⁷³ The exhortation, "Let every soul be subject unto the higher powers. For there is no power but of God; the powers that be are ordained of God,"⁷⁴ was spoken by Saint Paul, who died at the hands of the state, and was written to believers in Rome, who were living directly under the central totalitarian government of that day. The principle was further demonstrated by Christ, who recognized the *de facto* government of Rome by submitting Himself to it, despite resulting injustice.⁷⁵

The only limitation imposed by the Christian faith upon the command of the state has been that it not go beyond its proper jurisdiction. Both the affairs of the state and of the individuals who control the state are subject to the sovereignty of God.⁷⁶ Christ's response, "Render unto Caesar the things that are Caesar's; and unto God the things that are God's,"⁷⁷ has had the effect of denying to the state any control over man's relations with God.⁷⁸

⁷³ One today might think it "unchristian" for the disciples to have been so submissive to the government of Rome and to have failed to take a stand for democracy, for the right of free speech, and for freedom from external oppression. Nevertheless, on these points, we find them silent. In fact, we find the early believers exhorted to obey the laws and to pay taxes, *Romans* 13:6, and the slaves to obey their masters. *Ephesians* 6:5-8, *Colossians* 3:22-25. It seems apparent that their course of action did not arise out of cowardice or a mistaken concept of the value of human freedom. The point at which Christians of the first century seem to have reacted to the dictatorial commands of the state was not when it denied them their rights, but when it denied them God's rights. Their chief work for the moment was not to lead revolutions, but to evangelize the world. Bayly, *Our Rights*, His, Dec. 1959, p. 49.

⁷⁴ *Romans* 13:1.

⁷⁵ By His submission and resulting crucifixion, Christ fulfilled the will of the Father and made salvation possible for humanity. Moreover, when Pilate had falsely assumed that his political position had been gained by his own artifices, Jesus corrected: "Thou couldst have no power at all against me, except it were given thee from above." *Luke* 19:11.

⁷⁶ *Acts* 17:26. See also *Isaiah* 46:9-10; *Daniel* 4:10.

⁷⁷ *Matthew* 22:21; *Mark* 12:17; *Luke* 20:25.

⁷⁸ Parsons, *supra* note 31, at 221.

Magistrates may hence learn what their vocation is, for they are not to rule for their own interest, but for the public good; nor are they endowed with unbridled power, but what is restricted to the well being of their subjects; in short, they are responsible to God and to men in the exercise of their power.⁷⁹

Biblical writings are not lacking for situations in which the control of the state over divine matters was rejected. During the Babylonian captivity the Hebrew children were commanded to worship the ruler's image in violation of the Decalogue. Three men revolted against this command, preferring punishment to compliance.⁸⁰ Darius the Mede, some forty years later, issued a similar command. His prime minister, Daniel, chose a night in the lion's den to disobedience of God.⁸¹ The pages of history are stained with the blood of martyrs who similarly chose death to disobedience of a command which infringed on the jurisdiction of God.

Since they are citizens of a heavenly kingdom, however, some Christians have taken the position that they have little, if any, responsibility to the country in which they live.⁸² Today's emphasis upon "church activities" has, for some, replaced the responsibility to engage in civic and political affairs. Some even consider politics inherently evil and civic duties something to be avoided. However, for two reasons, political questions may be considered moral questions, and therefore within the realm of Christian interest.⁸³ First, political affairs involve the exercise of free choice by individuals. These choices are made by the individuals who constitute the government. Therefore, the choices of the individuals in control of the state must be measured by moral criteria, for one alternative may be right or wrong in the light of a particular standard of morality. Secondly, political problems are moral problems because the state commands and controls the actions of individuals, and individuals are free moral agents. Moreover, the state can act only through individuals, and they are responsible for their own acts.

Here, then, is one basis for a separation of church and state. The church must be separate from the state in order to train its members more effectively in moral principles with which the state's actions may be criticized. The church is instituted to be a light in the midst of darkness. Therefore, as Ellul states, there can be neither total

⁷⁹ Calvin, Commentaries on the Epistle of Paul the Apostle to the Romans 481 (Owen transl. 1849).

⁸⁰ Thus Nebuchadnezzar sent Shadrach, Meshach and Abed-nego to the fiery furnace. *Daniel* 3.

⁸¹ *Daniel* 6.

⁸² Mark, *Caesar's Rights*, His, Nov. 1955, p. 23.

⁸³ Peterson, *supra* note 19, at 13.

separation nor confusion between the church and the state.⁸⁴ If the church were to become too involved in the affairs of the state, it might not possess the perspective necessary for proper criticism.

Since the only influence which the church may properly exert on the government is through the moral training of its individual members, it follows that the burden of the responsibility for keeping the government within its jurisdiction must fall upon the individual himself. Today's Christian is confronted by a profound challenge to help create, through law, conditions of justice in which the Christian way of life may take root and grow. This may indeed be difficult in a world inhabited by people who are avowedly non-Christian, and in many instances anti-Christian. There is a tendency on the part of the political communities of the modern world to subordinate justice to goals which are not specifically Christian, such as economic progress, political power, or conformity to secular ideologies such as communism, nationalism, and humanism. As such, the law of the state has become a major instrument for molding ideas and values.⁸⁵ Thus the church is threatened by the use of law to help create beliefs, indeed religions, which are antagonistic to the Christian faith. In the words of Ellul, "The state must not exceed the limits imposed by God; it must not assume a religious function. It must not require worship for itself or for the idols it creates."⁸⁶

The dangers imposed by the "state-religions" of our day pose a formidable threat, not only to the cause of Christianity, but also to the principle of American freedom.⁸⁷ "When a society is perishing," stated Pope Leo XIII, "the true advice to those who would restore it, is to call it to the principles from which it sprang."⁸⁸ Thus it is the task of Christians today to influence legal development so that the government does not, in effect, subsidize paganism. *McCullum v. Board of Education*⁸⁹ must be tempered by *Zorach v. Clauson*,⁹⁰ else the wall of separation will loom so high as to favor an atheistic belief, and in so doing, remove the basis of American democracy. The secular morality of Western law, with its impartiality, its

⁸⁴ Ellul, *supra* note 21, at 135.

⁸⁵ Berman, *supra* note 1, at 97.

⁸⁶ Ellul, *supra* note 21, at 136.

⁸⁷ Vice-President Lyndon B. Johnson, at the 1961 Presidential Prayer Breakfast, stated, "The separation of church and state was never to mean the separation of religious values from the lives of America's public servants." Mayflower Hotel, Washington, D.C., Feb. 9, 1961. "The deterioration of every government," adds Montesquieu, "begins with the decay of the principles on which it was founded." Montesquieu, *The Spirit of Laws*, Bk. VIII, quoted in Nilsson, *Revitalizing Citizenship: A Citizen's Duties to His Country*, 44 A.B.A.J. 517, 520 (1958).

⁸⁸ Quoted by Billy Graham, 1961 Presidential Prayer Breakfast, *Ibid.*

⁸⁹ 333 U.S. 203 (1948).

⁹⁰ 343 U.S. 306 (1952).

equality, its recognition of the binding force of promises, its punishment of wrong, and its promotion of trust and confidence, is derived in part from Christian faith, hope, and love. Without the motivating power of Christianity our secular morality would become indeed ineffectual.

V. CONCLUSION

"Watch ye, stand fast in the faith, quit you like men, be strong."
1 Corinthians 16:13

May Day has traditionally been a happy, carefree day in the Western world. It is characterized by dancing, gathering spring flowers, and choosing a queen of the May.⁹¹ In America it celebrates the Rule of Law; it is Law Day, U.S.A.⁹² However, for an increasingly large portion of the world, May Day has become a resounding declaration of world-wide Communist power, characterized by parades of tanks and missiles, by marching in Moscow's Red Square, and by demonstrations in neutral and non-Communist countries.

If we are realistic, we must admit that there are many areas of our society, our law, and even our church which need drastic revision if our system of justice, founded upon the principles of Christianity, is to continue in the face of the threat of Communism and the other atheistic state-religions. We must realize that our War for Independence is no longer meaningful to the newly-liberated colonies. Our Emancipation Proclamation is of little inspiration to the emerging nations of Africa and Asia, particularly in the light of continuing discrimination against the darker races within our own society. Moreover, our society, never of great cultural inspiration, is becoming replete with examples of moral regression. Payola, income tax evasion, and welfare fund scandals seem to have become the accepted rather than the eschewed.

But if American culture does not stir the nations, should not the American church? There was a time when the poor and downtrodden of earth found their great hope in Christianity, but that time has apparently passed. Throughout the world with but rare exceptions, the Christian movement is considered an "established" one, with vested interests which are dependent upon maintenance of the *status quo*. The Christianity of today is as far from the explosive charge of first century Christianity as modern America is distant from the War for Independence. We are not merely a millionaire nation; we are a millionaire church. And millionaires seldom lead revolutions.

⁹¹ Bayly, *May Day*, His, May 1960, p. 1.

⁹² 75 Stat. 43 (1961), 36 U.S.C. § 164 (Supp. III, 1962).

And yet a revolution of sorts is necessary, for we must find a way to change the individual so that he will love instead of hate, so that the hypocrite of today may tomorrow become "Christ's man from head to foot, giving no chance to the flesh to have its fling."⁹³ Today God cannot be looking at the military might or economic prosperity of our nation; He is looking at the heart of America, at the heart of each citizen, at the heart of every Christian attorney. He is searching for the moral and spiritual values that have made this nation what it is. As General Douglas MacArthur said at the close of World War II, "We have had our last chance. The problem of survival basically is theological and involves a spiritual recrudescence."⁹⁴

"May Day" in radio-telephone communications is a signal of distress. It is the voice equivalent of the code S.O.S. The brief cry, "May Day," means "Help, we perish. Disaster is upon us."

And, unless Christianity and law can work hand in hand, it is indeed.

⁹³ *Romans* 13-14 (Phillips translation). For an opinion of a hypocritical society, see *Romans* 3:10-18, and of individual hypocrites, see *Matthew* 23:27-28, with their reward in verse 33.

⁹⁴ MacArthur, *Battleship Missouri*, Sept. 2, 1945, quoted in Nilsson, *supra* note 87, at 518.